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79-1404

In the Supreme Court of the United States

October Term, 1979
No.

PENNHURST STATE SCHOOL AND HOSPITAL, et al.,
Petitioners

v.

TERRI LEE HALDERMAN, et al.,
PENNSYLVANIA ASSOCIATION FOR RETARDED CITIZENS, et al.
and
UNITED STATES OF AMERICA,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Helen O'Bannon, Secretary of the Department of Public Welfare, Commonwealth of Pennsylvania, *et. al.*, hereby petition that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Third Circuit entered in this case on December 13, 1979.

I. OPINIONS OF THE COURTS BELOW

The majority and dissenting opinions of the Court of Appeals, reproduced at 89a to 196a, are not yet reported.

The opinion and order of the District Court is reported at 446 F. Supp. 1295 (E.D. Pa. 1978) and is reproduced at 6a to 75a.

II. JURISDICTION

The judgment of the Court of Appeals was entered on December 13, 1979. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254 (1).

III. STATEMENT OF QUESTIONS PRESENTED

1. Does The Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6000 *et seq.*, grant residents of a State institution for the mentally retarded an enforceable right to treatment in the least restrictive setting when that institution receives no funds under that Act and when the State receives only minimal funding?

2. Does The Developmentally Disabled Assistance and Bill of Rights Act require a State to create and fund community-based mental retardation treatment facilities irrespective of cost, available resources, or State policy?

3. Does the United States have standing or authority to intervene in this case?

4. Does the District Court's exercise of detailed control over the decree of deinstitutionalization and its subsequent delegation of authority to a special master exceed the proper scope of federal judicial authority?

5. Did the Court of Appeals properly conclude that State law grants the mentally retarded a right to treatment, particularly when that holding is insufficient to impose liability?

IV. STATUTORY AND REGULATORY PROVISIONS INVOLVED

The following statutory and regulatory provisions relevant to this petition are set forth verbatim in the Appendix hereto:

Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6000, *et seq.* (1977):

Sections 6000, 6010-11, 6061-63 ..... 198a
45 C.F.R. §§1385.1, 1386.42-.43 ..... 217a

Rule 53, Fed. R. Civ. P., 220a.

Penna. Mental Health and Mental Retardation Act of 1966, Pa. Stat. Ann. Tit. 50 §4101, *et seq.* (Purdon):

Sections 201 (1), 509 (1 and 5) 225a

V. STATEMENT OF THE CASE

On February 15, 1966, Terri Lee Halderman was voluntarily admitted by her parents to Pennhurst Center, one of approximately ten state-run institutions providing care for the mentally retarded in Pennsylvania. Dissatisfied with the services and facilities at Pennhurst, her mother commenced this action in May 1974 against a host of state officials from the Secretary of Welfare to Pennhurst staff.

On behalf of all other Pennhurst residents,[1] she sought damages and broad equitable relief aimed at upgrading the conditions at Pennhurst, claiming that those conditions violated her constitutional "right to treatment". She also alleged violations of the Equal Protection Clause of the Fourteenth Amendment, and the Pennsylvania Mental Health and Mental Retardation Act of 1966. Pa. Stat. Ann. tit. 50 §4101 *et seq.* (Purdon).

Subsequently, the plaintiff was joined in her efforts by the United States,[2] Pennsylvania Association of

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[1] A class was certified pursuant to Rule 23(b) (1 and 2), Fed. R. Civ. P., to include:

> All persons who as of May 30, 1974 and at any time subsequent, have been or may become residents of Pennhurst State School and Hospital (14a).

[2] Defendants unsuccessfully opposed the United States' intervention. They also unsuccessfully sought mandamus or prohibition against the district court judge to prohibit the continued participation of the United States in the litigation. *Beal v. Broderick*, 431 U.S. 933 (1977).

Retarded Citizens, and other retarded residents of Pennhurst. Intervenors raised similar, if not identical, claims.

In early 1976, plaintiffs amended their complaints and their prayer for relief. Adding claims under the Developmental Disabilities Assistance and Bill of Rights Act, 42 U.S.C. §6000 *et seq.* (hereinafter "Developmental Disabilities Act"), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794,[3] plaintiffs contended that Pennsylvania was required to close its institutions such as Pennhurst and provide services to the retarded in small-scale, community-based facilities[4] instead.

Following thirty-two days of trial, the District Court issued its opinion and order.[5] The court did not address plaintiffs' claims under the Developmental Disabilities Act, but did grant the injunctive relief requested. The court found that plaintiffs had a constitutional right to be provided with education, training and care sufficient to reach their maximum development (57a) in the least restrictive environment (62a). "[I]nstitution[s] such as Pennhurst", the court concluded, were by their very nature incapable of providing adequate care (58a). Additionally, the court held that treatment at Pennhurst was unlawful segregation under the Fourteenth Amendment (68a) and Section 504 of the Rehabilitation Act (73a). Section 504, the court concluded, "codified the constitutional right to equal protection" (71a).

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[3] The United States, although charged with the enforcement of these statutes, did not join other plaintiffs in these claims.

[4] These facilities are referred to by the Court as Community Living Arrangements ("CLAs"). Neither plaintiff nor the Court have ever defined the precise nature of these facilities (191a, n.5).

[5] The opinion was issued December 23, 1977 and the order March 17, 1978.

Implementing that decision, the court ordered sweeping injunctive relief, including the closing of Pennhurst and its replacement by "suitable community living arrangements" and all necessary support services (79a-80a) for all of the approximately 1,200 residents of Pennhurst (19a). A Special Master with broad powers over the detail of implementation was also appointed (79a).

On appeal, the Court of Appeals[6] implicitly rejected the District Court's holding that Pennhurst was *per se* illegal and/or unconstitutional. However, with three judges dissenting, the court did find that the Developmental Disabilities Act granted a right to treatment in "the least restrictive environment" (130a-131a). In reaching that issue, the court determined that the statute created a private cause of action. It also found a state statutory right to treatment and affirmed the order of the District Court permitting the United States to intervene as a plaintiff.

Based exclusively on its interpretation of the Developmental Disabilities Act, the Court of Appeals affirmed the District Court in most material respects.[7] Thus, on remand, the District Court or its appointed Master must determine the therapeutic needs of each patient at

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[6] The case was first heard by a panel of the court in January of 1979. That panel issued no opinion; instead, the Court scheduled reargument before the Court en Banc, held September 6, 1979. It also requested briefing on specified issues, including the Developmentally Disabled Act, which had not previously been briefed to that court or the District Court.

[7] The Court of Appeals affirmed the District Court except insofar as it directed the closing of Pennhurst, barred all future admissions to Pennhurst and required defendants to find alternative employment for all Pennhurst employees (161a).

Pennhurst. "Only where the court or the Master finds that an improved Pennhurst is the only appropriate place for individual patients should it be used. For all other patients, CLAs must be provided." (160a)

It is from this decision that the defendants, hereinafter referred to as petitioners, seek a writ of certiorari.

VI. REASONS FOR GRANTING THE WRIT

A. This Case Presents Questions of Great Public Importance

The court below decided at least two novel and important federal statutory issues. Breaking entirely new ground, the court held that the Developmentally Disabled Assistance and Bill of Rights Act, 42 U.S.C. §6000, *et seq.* (hereinafter "Developmentally Disabled Act"), (1) applies to programs such as Pennhurst which receive no funds under its provisions and (2) grants mentally retarded persons a right to treatment "in the least restrictive environment", which requires a state to create new, less restrictive facilities for persons residing in state institutions.

Accordingly, each state which, like Pennsylvania, accepts the minimal funding available under the Developmentally Disabled Act must, regardless of cost, available resources, or state policy, create whatever new facilities are necessary to provide services to the mentally retarded in the least restrictive environment. Moreover, that holding judicially mandates one method of caring for the mentally retarded to the exclusion of others, seriously intruding into areas properly reserved for professional expertise and state legislative and executive judgment. *Secretary of Public Welfare v. Institutionalized Juveniles,* 99 S.Ct. 2523 (1979); *Bell v. Wolfish,* 99 S.Ct. 1861 (1979).

In 1976, there were over 150,000 mentally retarded persons in the United States residing in institutions similar to Pennhurst (13a-14a, n.7). The reasoning of the court below applies with equal force to each of those persons, each of those institutions, and each state of the Union.[8] In short, the Court of Appeals effected a total federal preemption in the area of services for the developmentally disabled. Indeed, the decision raises grave doubts as to many other programs in which states receive federal funding but in which state discretion has been long recognized. *See,* e.g., Title XIX of the Social Security Act, 42 U.S.C. §1396, *et seq.*

In addition, instead of stating the appropriate legal standards and enjoining the Petitioners to implement relief, the District Court has maintained direct supervisory power over the detail of implementation through appointment of a master. This raises grave questions concerning the power and capabilities of federal courts to intervene into the daily activities of state and local governments. *See Rizzo v. Goode,* 423 U.S. 362 (1976).

Finally, the participation of the United States in this action, affirmed by the court below, presents significant questions regarding "case or controversy" requirements. The expansion of executive authority approved in this case has broad impact. *Estelle v. Justice,* 426 U.S. 925, 929 (1976) (Rehnquist J. dissenting).

Because this case involves issues of great public importance, this Court should grant review in this case.

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[8] All fifty states presently accept funds under the Act. President's Budget, 1979, Developmentally Disabled Basic State Formula Grant. Thus, this case has a direct bearing on every public institution in the United States serving the mentally retarded.

B. The Decision of the Court of Appeals Is Erroneous

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1. The court below has erroneously held that the Developmentally Disabled Act provides Respondents with a right to treatment in the least restrictive environment.

a. The court below held that the Developmentally Disabled Act provides rights to mentally retarded persons residing at Pennhurst, notwithstanding the absence of any finding that the institution receives any funds whatsoever under the statute. Thus, the court below found that by accepting any funds under that Act, Pennsylvania consented to comply with the statutory guidelines in each of its many programs providing services to the developmentally disabled (118a-119a).[9]

The Court of Appeals overlooked, however, the obvious fact that the Developmentally Disabled Act is exclusively a funding statute, providing federal grants to states electing to participate in the program. 42 U.S.C. §6063; *United States v. Solomon,* 419 F. Supp. 358, 369-70 (D. Md. 1976), *aff'd* 563 F.2d 1121 (4th Cir. 1977). Accordingly, a state seeking funds under the Act must have a plan approved by the Secretary of Health, Education and

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[9] In dicta, the court below suggested that the Act was an exercise of congressional power under the Fourteenth Amendment (117a-118a, n. 20). In the absence of a decision by this Court recognizing a constitutional right to treatment in the least restrictive environment, such a holding would raise serious questions concerning the congressional power to define the parameters of the Fourteenth Amendment. Cf. *Oregon v. Mitchell,* 400 U.S. 112 (1970); *Katzenbach v. Morgan,* 384 U.S. 641 (1966).

Welfare, 42 U.S.C. §6063(a), based upon compliance with the conditions outlined in 42 U.S.C. §6063(b).

By their terms, the conditions of participation apply only to programs receiving funds under the Act. *See,* e.g., 42 U.S.C. §6063(b)(5)(A)(22). Protection of the rights enunciated in 42 U.S.C. §6010 is limited to "all persons . . . receiving treatment, services, or habilitation under programs assisted under this chapter. . . ." 42 U.S.C. §6063(b)(6)(C). Even the basic requirement of a habilitation or treatment plan was intended to apply only to treatment programs funded by the Act. 42 U.S.C. 6011(a). *See also,* Conf. Rep. No. 94-473, 94th Cong., 1st Sess. 43, reprinted in 2 U.S. Code Cong. & Ad. News, 919, 963 (1975).

Moreover, the lower court's broad reading of the Act ignores the practicalities of providing services to the many thousands of developmentally disabled persons in Pennsylvania. For example, the cost in 1976 of operating Pennhurst alone was $27.8 million (44a), itself but a small part of Pennsylvania's expenditures on behalf of the mentally retarded. In contrast, Congress authorized appropriations under the Act totaling only $55 million for the fiscal year ending September 30, 1979, 42 U.S.C. §6061, of which Pennsylvania received approximately $1.6 million. Surely Congress did not intend that this minimal funding to Pennsylvania would require a total restructuring at substantial cost of programs receiving no funding under the Act.

In those instances when Congress has intended to impose federal standards on all activities conducted by a recipient of federal funding, it has done so clearly. *See* e.g., Section 504 of the Rehabilitation Act of 1973, 29

U.S.C. §794 (1976); The Education for All Handicapped Children Act of 1975, 20 U.S.C. §§1401, *et seq.* (1976). Certainly, such an intent may not be lightly inferred. *Cf. Southeastern Community College v. Davis,* 99 S.Ct. 830 (1979).[10]

b. The Court of Appeals discerned in the Act a legislative "preference" for treatment in "the least restrictive environment" (97a, 141a). The court then elevated that "preference" to a mandatory duty to provide less restrictive treatment, regardless of cost of available funds. On that basis it affirmed the District Court's order requiring the creation of community-based facilities.[11] In so doing, it exceeded even the broad statutory mandate which it had established.

Even if the Developmentally Disabled Act applies to those persons residing at Pennhurst and, in addition, provides those persons a right to treatment while there, it certainly imposes no duty on Pennsylvania to create new facilities. Nowhere does the Act mandate the provision of services to the developmentally disabled. Rather, at most, it sets forth standards which must be met by those services which are offered. Thus, even assuming that the

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[10] Under the reasoning in this case, because Pennhurst receives funds under the Medical Assistance Program, Title XIX of the Social Security Act, 42 U.S.C. §1396, *et seq.* every state program eligible for funding under that statute would be required to comply with its standards, whether or not such programs wished to receive such funding. *See Beal v. Doe,* 432 U.S. 438 (1977).

[11] Even as interpreted by the court below, state law provides no basis for that order since the court acknowledged that all state law requires "is that to the extent Pennsylvania maintains facilities for the mentally handicapped, *those* facilities must provide adequate treatment or habilitation." (127a) (emphasis added).

Act bars Pennsylvania from providing services in a "more" restrictive environment, it does not require Pennsylvania to create new, less restrictive facilities.

As correctly noted by Chief Judge Sietz in dissent, "Congress intended the Act to be no more than an incentive to deinstitutionalization, not an imposition of a mandatory requirement regardless of fiscal concerns." (168a) Regulations implementing the Act, e.g., 45 C.F.R. §§1385.1, 1386.42-.43, confirm its modest purposes. See also House Rep. No. 94-58, 94th Cong., 1st Sess. 10, reprinted in 2 U.S. Code Cong. & Ad. News, 919, 928 (1975).

Similarly, the court's heavy reliance on Section 6010, providing a "Bill of Rights", is clearly misplaced. As Chief Judge Sietz properly stated:

> I do not believe especially with a funding statute such as the one here, that general findings and declarations should be used as a charter for the creation of absolute obligations where Congress felt the states should be free to choose on their own as to the proper allocation of funds. . . . In sum, where Congress establishes a funding scheme designed to encourage a course of conduct, that is no license to federal courts to make that conduct mandatory. (168a-169a)

Cf. Southeastern Community College v. Davis, supra.

In short, the Developmentally Disabled Act imposes no affirmative duty to create services and facilities regardless of cost, but rather encourages the states to utilize their resources in a manner which recognizes the preferability of community placement. The decision of the Court of Appeals misconstrues this purpose in violation

of principles clearly established by this Court and in a manner which affects every state of the Union and thousands of their citizens. Accordingly, this Court should grant review of that decision.

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2. The court below erroneously and unnecessarily found that state law provides a right to treatment.

After finding a federal statutory right to treatment, the court below examined state law and found that it too provides a right to treatment. It did not, however, find in state law, as it had in the Developmentally Disabled Act, a requirement or "preference" that treatment be provided in the least restrictive environment. Thus, this state law holding was unnecessary and insufficient to support affirmance. *See Murdock v. City of Memphis,* 20 Wall. 590 (1875).

Even if the court properly considered state law, it misconstrued that law. The court below relied on Section 201 of the Pennsylvania Mental Health and Mental Retardation Act which provides in pertinent part:

> The department shall have power and its duty shall be: (1) to assume within the State the availability and equitable provision of adequate mental health and mental retardation services for all persons who need them. . .

Pa. Stat. Ann. Tit. 50 §4201 (Purdon). The court concluded that treatment was a mandated service.

However, the Court of Appeals stopped short of finding an "unconditional" state right to treatment (126a). Rather, the court held only "that to the extent

Pennsylvania maintains facilities for the mentally handicapped those facilities must provide adequate treatment or habilitation" (127a).

This limited holding is not supported by any decision of any court of state-wide jurisdiction. Moreover, in going even that far, the court completely ignored the legislative mandate that the Department of Public Welfare "assure . . . the *availability* and *equitable* provision of . . . adequate mental retardation services for all persons who need them." Pa. Stat. Ann. Tit. 50 §4201(1) (Purdon) (emphasis added). *See also,* Pa. Stat. Ann. Tit. 50 P.S. §4509 (Purdon).

In short, in deciding this difficult issue unnecessarily and without the assistance of meaningful state court precedent, the court wholly misinterpreted state law. For this reason, this Court should review the actions of the court below.

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3. The order of the court below exceeds the proper scope of federal judicial authority.

The Court of Appeals has vested in the District Court and its appointed master plenary discretion over the massive and sensitive task of developing community services for the retarded. Individual placement and treatment decisions are subject to the District Court's control (161a). The Master currently has complete authority to determine the community services to be provided, staffing needs, and monitoring systems, as well as to supervise the interim operation of Pennhurst (148a). In short, Petitioners have been stripped of their sovereign power.

The court's usurpation of state authority conflicts squarely with principles of comity repeatedly announced by this Court. *See,* e.g., *Rizzo v. Goode,* 423 U.S. 362, 377-380 (1976); *Doran v. Salem Inn,* 422 U.S. 922, 998 (1975). The "special delicacy" between "federal equitable power and state administration of its own law", *O'Shea v. Littleton,* 414 U.S. 488, 500 (1974), has been roughly cast aside. As it did in *Rizzo v. Goode,* the Court of Appeals has sanctioned an overly broad judicial intrusion into the internal affairs of state government.

Judicial intervention into the therapeutic process, as here, is especially troubling. The deference that must be accorded mental health professionals, *Parham v. J.R.,* 99 Sup. Ct. 2493 (1979); *Addington v. Texas,* 99 Sup. Ct. 1804 (1979), has not been recognized by the Court of Appeals. This error is accentuated by the District Court's finding that Petitioners are dedicated and qualified professionals (75a).

Finally, the court below ignored the limitations imposed by Rule 53, Fed. R. Civ. P. That rule authorizes reference to a master only in three narrow areas—matters of account, difficult computation of damages, and "upon a showing that some exceptional condition requires it". The latter phrase is narrowly construed. *LaBuy v. Howes Leather Co.,* 352 U.S. 249 (1957).

The exercise of "federal equitable power" and its subsequent delegation to a Master present an important issue concerning the power of federal courts to intrude into the actual operation of state government. Accordingly this Court should grant review of this case.

C. The Opinion of the Court Below Is in Direct Conflict With Decisions of the Fourth and Ninth Circuits Regarding the Authority of the United States To Seek Judicial Enforcement of the Rights of Mentally Retarded Persons

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The issue presented by the United States' participation in this lawsuit has previously been addressed by the Fourth Circuit in *United States v. Solomon,* 563 F.2d 1121 (4th Cir. 1977), and the Ninth Circuit in *United States v. Mattson,* 600 F.2d 1295 (9th Cir. 1979). The holding of the court below conflicts with both those decisions. *See also, In Re Estelle,* 516 F.2d 480, 487 (5th Cir. 1975), *cert. den. sub. nom, Estelle v. Justice,* 426 U.S. 925 (1976).

In *Solomon,* the United States brought an action charging the State of Maryland with violating the rights of mentally retarded residents of Rosewood State Hospital. The district court dismissed the action, holding that the United States lacked authority and, therefore, standing to bring it. The Fourth Circuit affirmed.

In so doing, the Fourth Circuit exhaustively examined both the relevant statutes and cases. The court found no express or implicit statutory authority for the government to sue, *Id.* at 1126, and rejected the argument that the lawsuit fell within the ambit of the rule that in certain limited areas the United States may sue without any express or implied statutory authority. *Id.* at 1129. The Ninth Circuit reached an identical result in *United States v. Mattson, supra,* expressly rejecting the government's argument that the Developmentally Disabled Act provides such approval.

The court below expressly considered and rejected the reasoning of the Fourth Circuit in *Solomon* (99a-102a). The lower court also attempted to distinguish *Solomon,* by relying on the fact that the United States had intervened in this action, rather than initiating suit as in *Solomon.*[12]

This ruling, however, overlooks the mandate of Article III, §2. Whether termed authority, standing or interest, the concept is the same: the United States has no legally cognizable stake in the operation of Pennhurst and thus no right to participate in this action. *Estelle v. Justice,* 426 U.S. 925, 929 (1976) (Rehnquist, J. dissenting); *Roe v. Wade,* 410 U.S. 113, 126-27 (1973); *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.,* 315 F.2d 564, 567 (7th Cir. 1963). There is a clear division between the Circuits. Accordingly, review of this case is respectfully requested.

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[12] The court concluded that intervention was proper because plaintiffs had raised federal statutory claims. Ironically, the United States' complaint asserted no violation of any federal statute.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit in this case.

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